

REMARKS

In the application claims 1-51 are pending but have been indicated as provisionally rejected over U.S. Pat. No. 6,871,096 to Hill under section 102(e) and/or section 103 of title 35, and in the latter basis of rejection the claims could be viewed as unpatentable over Hill in view of U.S. Pat. No. 5,741,308 to Sholder.

Applicants respectfully request entry and favorable consideration of the Terminal Disclaimer and the statement under 35 U.S.C. §103(c) provided herewith.

Double Patenting

Claims 1-51 stand *provisionally* rejected under the nonstatutory doctrine of obvious-type double patenting over U.S. Pat. No. 6,871,096 to Hill.

Applicants respectfully disagree but herewith submit a Terminal Disclaimer to overcome the rejection. Applicants note that the rejection was stated to be *provisional* due to the fact that the allegedly conflicting claims have not in fact yet been patented.

Rejection under 35 U.S.C. §102 / §103

The Examiner posits that at least some of pending claims 1-51 could be deemed unpatentable as anticipated by the '096 patent to Hill under 35 U.S.C. §102(e) or, in the alternative, some or all of pending claims 1-51 could be deemed unpatentable over the '096 patent to Hill in view of the '308 patent to Sholder.

Applicants hereby declare that the '096 patent to Hill is commonly owned with the subject matter claimed herein pursuant to 35 U.S.C. §103(c); that is, the subject matter of Hill and the claimed invention were, at the time the claimed invention was made, owned by the present assignee, Medtronic, Inc. and cannot be properly combined as posited by the Examiner.

Conclusion

Applicants respectfully suggest that all claims 1-51 are now in condition for allowance and respectfully request that a Notice of Allowance be issued so the claimed invention may proceed to timely issuance as U.S. Letters Patent.

The Commissioner is hereby authorized to charge Deposit Account Number 13-2546 for the cost of the instant disclaimer. Any deficiency or overpayment should be charged or credited to Deposit Account No. 13-2546.

Respectfully submitted,

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Date

/Paul H. McDowall/
Paul H. McDowall
Reg. No. 34,873
(763) 514-3351
Customer No. 27581